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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re EDUARDO A., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO A.,

Defendant and Appellant.

G051769

(Super. Ct. No. DL050391-001)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Julian W. Bailey, Judge. Affirmed as modified.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Eduardo A. appeals from an order of the juvenile court imposing probation conditions. First, he argues the oral pronouncement does not match the minute order and requests correction. We agree and will direct the court to correct the order accordingly. Second, he argues a probation term allowing the probation department to impose “limited informal sanctions” improperly delegated the court’s authority. Because the minor failed to object below, we deem this argument waived. The order is affirmed as modified.

I

FACTS

The Orange County District Attorney filed a petition pursuant to Welfare and Institutions Code section 602 in January 2015 alleging the minor committed second degree robbery. (Pen. Code, §§ 211, 212.5, subd. (c).) The charge was based on an alleged shoplifting incident at a Kohl’s retail store. The minor threw a punch at a loss prevention officer during his unsuccessful attempt to escape.

After a dispositional hearing, the juvenile court found the allegation true. The minor was ordered to serve 160 days in custody and to comply with specified probation conditions. The minor now appeals.

II

DISCUSSION

Discrepancy Between Oral Pronouncement and Minute Order

The minor argues, and the Attorney General agrees, that the minute order includes two probation conditions not ordered by the juvenile court. The provisions both relate to gangs – the first orders the minor not to be in any area where gang members congregate, and the second states the minor is not permitted to possess or wear any item that indicates gang membership or affiliation. The oral pronouncement of judgment does not include these conditions.

A discrepancy between the minutes and an oral pronouncement of judgment is presumed to be the result of clerical error, and the oral pronouncement prevails. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186.) Accordingly, we shall direct the order be modified to reflect the court’s oral pronouncement.

Limited Informal Sanctions Imposed by Probation Officer

We generally review probation conditions for abuse of discretion, with the exception of constitutional challenges, which we review de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

During pronouncement of judgment the court stated it authorized “[the] probation [officer or department], with your consent, to impose limited informal sanctions for violation of probation without a court order.” There was no objection by the minor’s counsel to this condition at any point. By failing to object below, the minor has forfeited all claims except a challenge “based on the ground the condition is vague or overbroad and thus facially unconstitutional.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 878.)

But the minor offers no argument about vagueness or overbreadth here. “[T]he void for vagueness doctrine applies to conditions of probation. [Citations.] An order must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated. [Citation.]” (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.)

With regard to overbreadth, a probation condition may be overbroad if it unduly restricts the exercise of a constitutional right, such as freedom of association, freedom of speech, or the right to privacy. (*In re Malik J.* (2015) 240 Cal.App.4th 896, 902; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016-1017.) Probation conditions that implicate such rights “must be tailored carefully and reasonably related to the compelling

state interest in reformation and rehabilitation.” (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.)

Although the Attorney General’s brief raised the waiver issue, the minor’s reply brief did not offer any argument as to why either of these factors apply here. Therefore, given his failure to object in the juvenile court, there are no remaining arguments for us to consider.

III

DISPOSITION

The two gang probation conditions included in the minute order are ordered stricken. In all other respects, the order is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.